

**HOT ISSUES FACT SHEETS - May 6, 2009 Updates**

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Non-responsive



- **Stream Buffer Zone (SBZ) Rule** – Revisions to the SBZ Rule, which required EPA concurrence prior to promulgation, were finalized in December 2008. Lawsuits have been filed challenging both the rule’s promulgation by OSM and EPA’s concurrence.

- **CWA section 404 v. section 402 permitting:**
  - *Southeast Alaska Conservation Council (SEACC) v. U.S. Army Corps of Engineers* (“Kensington”) - Challenge to Corps’ authority to issue a 404 permit to Coeur d’Alene Mining Corp. to discharge gold mine tailings from their Kensington Mine operations into Lower Slate Lake in Alaska.
  - At issue is whether the proposed discharge is governed by section 404 or section 402 of the CWA.
  - In May 2007, the Ninth Circuit reversed the lower court, holding that the discharge is subject to 402. The Circuit Court ruled that when a discharge is subject to an effluent limitation guideline or new source performance standard, the discharge must comply with 402.
  - The Supreme Court is expected to issue a ruling in this case by the end of the term in June.

**Interested Parties:**

- National Mining Association
- Environmental groups, nationally and regionally (e.g., Sierra Club, OVEC, SEACC)
- Senate appropriations committee (Chairman Robert Byrd (D-WV))
- Senate energy committee (Chairman Jeff Bingaman (D-NM) and Sen. Lamar Alexander (R-TN))
- House Natural Resources Committee (Chairman Nick Rahall (D-WV)).





























































